

REMARKS

In accordance with the foregoing, claims 1, 5, 8, 12 and 13 have been amended. Claims 1-8, 10-13, 15-16 and 18-19 are pending and under consideration.

The rejections under 35 U.S.C. § 103 are respectfully traversed. Independent claim 1 recites recording of the data recorded in the defect region in another region without a read-after-write operation. In contrast, column 3, line 34 of Takasago teaches a read-after-write operation. Kamiyama does not overcome these deficiencies. Independent claims 5, 8 and 13 are patentable over the cited references for at least somewhat similar reasons as discussed with respect to claim 1.

Independent claim 16 recites the reference length is a maximum length of the defective region where a servo status is stable and data is readable without any additional operation of the optical disc recording apparatus after data is recorded. In contrast, Takasago teaches that time T1 is shorter than a time necessary to cause off-track due to abnormality in optical disc apparatus. Thus, Takasago only teaches that the time T1 is shorter, but is not the maximum time.

This argument was previously presented, and the Examiner currently responds by stating that the maximum time is implicit. However, Applicants respectfully disagree. For example, in order to introduce an additional safety factor, the time T1 of Takasago may be shorter than necessary. Also, Takasago may have lacked the capacity to determine the error point with sufficient accuracy to maximize T1.

Thus, there are several reasons why T1 of Takasago could be less than the maximum time. Applicants respectfully traverse the Examiner's statement because supporting evidence related to this feature of the claimed invention has not been provided, and request that the Examiner produce authority for the statement.

The Applicants specifically point out the following errors in the Examiner's action.

First, the Examiner uses common knowledge ("well-known") evidence for the rejection. As explained in the M.P.E.P.,

any facts so noticed should... server only to "fill in the gaps" in an insubstantial manner which might exist in the evidentiary showing made by the Examiner to support a particular ground for rejection. It is never appropriate to rely solely on

common knowledge in the art without evidentiary support in the record as the principal evidence upon which a rejection is based.

M.P.E.P. § 2144.03

Second, the noticed fact is not considered to be common knowledge or well-known in the art. In this case, the limitation is not of notorious character or capable of instant and unquestionable demonstration as being well-known.

Third, there is no evidence supporting the Examiner's assertion (see, M.P.E.P. § 2144.03(B) ("there must be some form of evidence in the record to support an assertion of common knowledge").

Fourth, the Examiner appears to be basing the rejections, at least in part, on personal knowledge. The Examiner is required under 37 C.F.R. § 1.104(d)(2) to support such assertion with an affidavit when called for by the Applicant. The Examiner is called upon to support such assertion.

Accordingly, withdrawal of the rejection is requested.

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.


Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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